

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-11745RWZ

BARBARA DEIGHTON HAUPT, Trustee of  
BD REALTY TRUST,

Plaintiff

v.

TOWN OF WAREHAM acting by and  
through the BOARD OF SELECTMEN OF  
THE TOWN OF WAREHAM, and the  
BOARD OF SELECTMEN OF THE TOWN  
OF WAREHAM,

Defendants

MOTION TO STAY EXECUTION OF  
PLAINTIFF'S FIRST WRIT OF  
EXECUTION PENDING APPEAL AND  
WAIVE SUPERSEDEAS BOND  
REQUIREMENT

Now come the defendants, Town of Wareham acting by and through the Board of Selectmen of the Town of Wareham, and the Board of Selectmen of the Town of Wareham (collectively "the Town") in the above captioned matter and hereby request that this Honorable Court stay execution of plaintiff's first writ of execution pending appeal and waive the supersedeas bond requirement.

For reasons therefore, the Town states as follows.

Fed.R.Civ.P. 62(d) allows an appellant to obtain a stay of a monetary judgment against it by posting a supersedeas bond. Under Local Rule 62.2, a supersedeas bond staying execution of a money judgment shall be in the amount of the judgment plus ten (10%) percent of the amount to cover interest and any award of damages for delay plus Five Hundred and no/100 (\$500.00) Dollars to cover costs, unless the court directs otherwise.

As suggested by the language of Local Rule 62.2, this Court has discretion to alter the

supersedeas bond requirement. See e.g., Bowers v. Baystate Technologies, Inc., No. Civ. A. 91-40079, 2001 WL 640876 (D.Mass. June 5, 2001).

While the First Circuit Court of Appeals has not directly addressed the question of when a district court may allow a stay that is unsecured by a supersedeas bond, see Trustmark Ins. Co. v. Gallucci, 193 F.3d 558, 559 n. 1 (1st Cir.1999), the Seventh Circuit Court of Appeals has laid out five criteria that district courts in that circuit are to consider in making waiver decisions:

“(1) the complexity of the collection process; (2) the amount of time required to obtain a judgment after it is affirmed on appeal; (3) the degree of confidence that the district court has in the availability of funds to pay the judgment; (4) whether the defendant's ability to pay the judgment is so plain that the cost of a bond would be a waste of money; and (5) whether the defendant is in such a precarious financial situation that the requirement to post a bond would place other creditors of the defendant in an insecure position.”

Dillon v. City of Chicago, 866 F.2d 902, 904-05 (7th Cir.1988) (citations omitted).

That court has also indicated, and the First Circuit has cited with approval, that the bond requirement is inappropriate in two sorts of cases : where the defendant's ability to pay the judgment is so plain that the cost of the bond would be a waste of money; and--the opposite case ...--where the requirement would put the defendant's other creditors in undue jeopardy. Olympia Equip. Leasing Co. v. W. Union Telegraph Co., 786 F.2d 794, 796 (7th Cir.1986); see also Cipes v. Mikasa, Inc., 404 F.Supp.2d 367, 369 -370 (D.Mass. 2005)

In this matter, the Court should waive the supersedeas bond requirement because the Town's ability to pay the judgment is so plain that the cost of the bond would be a waste of money. If the Town is unsuccessful in its appeal of this matter, the funds to

satisfy the judgment will be immediately available without the need of a Town Meeting vote. See G.L. c. 44, §31. The Town is a stable and financially sound judgment creditor, indeed, the Town has been incorporated and functioning as a municipality for over 100 years and will continue to do so for the foreseeable future and a judgment of \$1.3 million will not bankrupt the Town. A supersedeas bond will, however, cost the Town two percent of the total judgment or approximately \$3,000.00, monies which are better spent on general municipal functions.

Based on the Town's financial stability and the statutory authority to pay any judgment immediately without the need for a Town Meeting vote, there is no risk that the Town will be unable to satisfy the judgment in the event that its appeal is unsuccessful and requiring expenditure for said bond would be a waste of valuable municipal resources. Therefore, this Court should waive the supersedeas bond requirement and stay execution of plaintiff's Writ of Execution.

DEFENDANTS,

By their attorneys,

/s/ Jeffrey T. Blake

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